



**SUPREME COURT OF
UNITED STATES**

OCTOBER TERM, 1941

No. 533

**NELLIE C. BOSTWICK, JACKSONVILLE
HEIGHTS IMPROVEMENT COMPANY, a
Florida corporation, et al.,**

**Petitioners and
Appellants Below**

**BALDWIN DRAINAGE DISTRICT, C. T.
BOYD and UNITED STATES OF AMERICA,**

**Respondents and
Appellees**

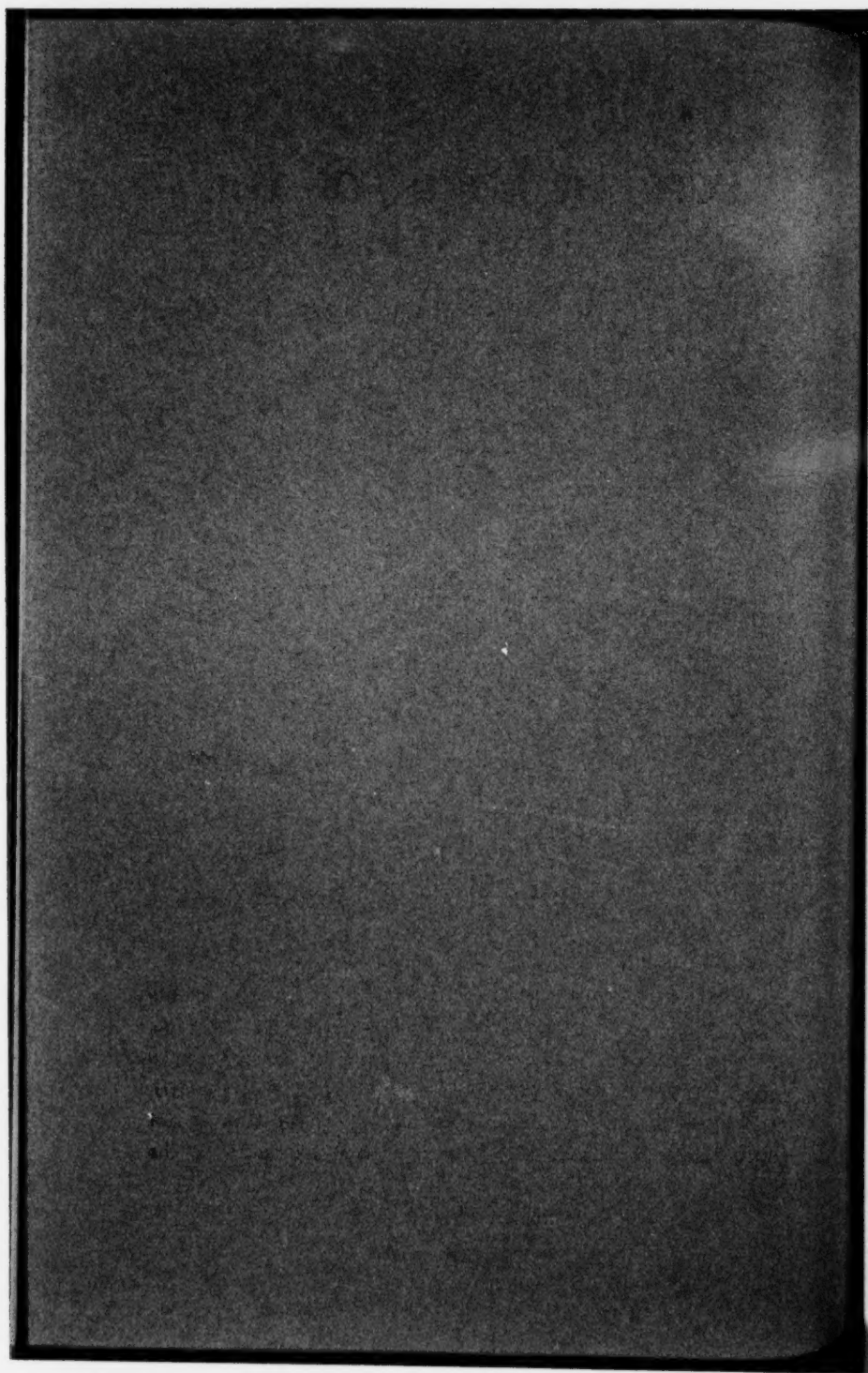
**BRIEF OF RESPONDENTS IN SUPPORT OF
THEIR MOTION FOR DENIAL OF CERTIORARI**

WILLIAM F. WATSON

Attorney General

JOHN T. WATSON

Attorney General



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 853

NELLIE C. BOSTWICK, JACKSONVILLE
HEIGHTS IMPROVEMENT COMPANY, a
Florida corporation, et al.,

*Petitioners and
Appellants Below*

vs.

BALDWIN DRAINAGE DISTRICT, C. T.
BOYD and UNITED STATES OF AMERICA,

*Respondents and
Appellees Below*

BRIEF OF RESPONDENTS IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

The opinion of the Circuit Court of Appeals in this case, 133 Fed. (2d) 1 (Adv. Op.) contains such a concise and clear-cut statement of the facts that are material to a consideration of the Petition for the Writ of Certiorari, that it is necessary to mention only one point that is not specifically mentioned. The Court of Appeals refers to the

decree of the District Court in Kreitmeyer against the District, and to the fact that the Court had expressly held

"That this Court has and does now hereby take jurisdiction of the parties and the subject matter", (298 Fed. 604)

and also refers to the fact that a Final Decree of Foreclosure was entered in the ancillary suit of Hemphill as Receiver against Duval Cattle Company, which was affirmed June 30, 1930, by the Circuit Court of Appeals (41 Fed. (2d) 433). But it does not specifically mention the fact that in that suit the Defendants (Duval Cattle Company, and St. Paul Trust and Savings Bank and Beddall, Trustees under a mortgage given by the Cattle Company) moved to dismiss on the ground that

"the Bill does not disclose jurisdiction in this Court to entertain this suit",

and the Court denied the Motion. So here Petitioners are attempting to attack collaterally, not only the decree in the primary suit of Kreitmeyer against the District, but also the decree in the ancillary suit brought by the Receiver against the Duval Cattle Company, (Petitioner Bostwick's predecessor in title,) under which the District obtained title to the land.

Jacksonville Heights Improvement Company, the other petitioner, did not contest the suit of the Receiver to foreclose taxes on its lands; but decree pro confesso was not entered against it until October 21, 1930, nearly four months after the Circuit Court of Appeals had affirmed the final decree in the Duval Cattle Company case, holding that the Court had jurisdiction of that case.

The opinion of the District Court in *Kreitmeyer vs. Hemphill*, 298 Fed. 604, and those of the Circuit Court of Appeals in *Kreitmeyer vs. Hemphill*, 19 Fed. (2d) 513 and *Duval Cattle Co. vs. Hemphill*, 41 Fed. (2d) 433, disclose the historical background of this suit.

The title of the Baldwin Drainage District in and to the lands of both Petitioners was acquired under deeds from Masters appointed by the District Court in the two ancillary foreclosure proceedings and were not executed until the one-year period of redemption allowed by law had expired. No appeal was taken from either Order authorizing the execution of those deeds. It is also true that no one questioned those decrees until the United States Government condemned the lands. Petitioners first raised these questions by answer to the Bill of Condemnation.

The decision of the Circuit Court of Appeals rests primarily upon its finding that the Bill of Complaint in *Kreitmeyer* against the District affirmatively showed the requisite diversity of citizenship; that the District Court had adjudicated that it had jurisdiction of that suit, and that no appeal was taken from its decision. However, we construe the opinion as also holding that the ancillary bills of *Hemphill*, Receiver against Petitioners showed that the District Court had jurisdiction of those cases. In the *Duval Cattle Company* case, the District Court so held when it denied the Motion to Dismiss, and the Circuit Court of Appeals affirmed that decision. In the ancillary suit of *Hemphill* against the Jacksonville Heights Improvement Company, the Court so held when it entered Decree Pro Confesso and the Final Decree. These decrees were

withheld until after the Circuit Court of Appeals affirmed the decision in the Duval Cattle Company case. The authorities cited by the Circuit Court of Appeals in its opinion, and from which it quotes, are conclusive that those decrees of the Federal Court, entered fourteen years ago, finally adjudicated that Court's jurisdiction of those cases.

The Circuit Court of Appeals also considered two other questions: (1) Whether Petitioners had alleged facts that showed that the District had used the tax foreclosure suits to obtain an unconscionable advantage over them. Petitioners have not raised this question in their petition or brief, and it is not urged as reason for the Writ. Even if it were, it is merely an issue of fact that would not support the Petition. (2) Whether Mrs. Bostwick, one of the Petitioners, can attack the Decree of Foreclosure against the Duval Cattle Company. The material facts that relate to this issue are summarized in the opinion of the Circuit Court of Appeals. That Court held that under the facts it was immaterial

"whether she was or was not, through the mortgage trustees a party to the suit",

and that

"We think she was a party".

The conclusion of the Circuit Court of Appeals on this point is predicated in large degree upon a statement of this Court quoted from its opinion in *Kersh Lake Drainage Dist. vs. Johnson*, 309 U. S. 485, 84 L. ed. 883, which case is now said by Petitioners to be contrary to the decision of the Court of Appeals.

Petitioners do not challenge the accuracy of the recital of facts in the opinion of the Circuit Court of Appeals. The "Questions Presented" by the Petition (pp. 2-13) and the supporting brief show that the Petition merely seeks to appeal from a decision of the Circuit Court of Appeals adverse to them.

All of the "Reasons" given for the issuance of the Writ (except one) rest upon the claim that the decision of the Circuit Court of Appeals is "probably in conflict with other decisions" of this Court. But an examination of the cases said to be in conflict shows that none of them involved the question decided by the Circuit Court of Appeals, and that none of them are in conflict with its decision. On the contrary, the cases cited by the Circuit Court of Appeals are direct and clear-cut precedents for its decision.

The other "Reason" given for the issuance of the Writ, is the claim of Petitioners that the decision that Mrs. Bostwick is bound by the Decree of Foreclosure in *Hemphill vs. Duval Cattle Company*, supra, is contrary to the law of Florida in *Griley vs. Marion Mortgage Company*, 132 Fla. 299. But the Court of Appeals considered that case and its opinion shows that the case is not applicable, because there the beneficiaries were known or named. Its decision rests upon the decision of this Court in *Kersh Lake Drainage Dist. vs. Johnson*, supra, that bondholders are not necessary parties where the trustee under the bond issue was a party and exercised its powers in good faith. *Kerrison vs. Stewart*, 93 U. S. 155, 23 Wall. 843, is also in point, because Mrs. Bostwick does not claim that she did not know of the foreclosure proceedings, or that she made any effort

to find out about them, or that she ever made demand upon the Trustee, or that the Trustee failed to make defense to the tax foreclosure suit brought by the Receiver. The record shows affirmatively that the Trustee did defend that suit. She is not claiming a right of redemption; she does not offer to pay taxes or to do equity. On the contrary, she seeks to nullify the foreclosure proceedings which resulted in a Final Decree affirmed by the Circuit Court of Appeals fourteen years ago, without offering any excuse for her failure to act in the meantime.

In addition to the cases cited in the opinion of the Circuit Court of Appeals, we cite *Evers vs. Watson*, 156 U. S. 527, 39 L. ed. 520, where the District Court had aligned the parties and sustained its jurisdiction. Plaintiff claimed that if the parties had been properly aligned, the Federal Court would not have had jurisdiction. This Court held that even if the District Court had been mistaken in its alignment of parties,

“his decision in respect thereto would not be reviewable collaterally”,

and that the Final Decree in the former case was

“a valid bar to the suit under consideration”.

We submit, therefore, that the decision of the Circuit Court of Appeals is not contrary to prior decisions of this Court, but, on the contrary, is in strict accord with them; that the decision of the Circuit Court of Appeals is not in conflict with the law of the State of Florida; that the District has not obtained an unconscionable advantage over Petitioners by reason of the deeds it obtained from

Masters of the Federal Court under the foreclosure decrees of the Federal Court twelve years ago. We contend that the position of the Petitioners is highly inequitable, and that they have no right to question the validity of the District's title in this action at this time and under the facts of this case.

Respectfully submitted,

*Attorneys for Respondents and
Appellees Below.*



(27)

Supreme Court, U. S.

FILED

MAY 1 1943

CHARLES ELMORE GROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 853.

NELLIE C. BOSTWICK, JACKSONVILLE HEIGHTS
IMPROVEMENT COMPANY, A FLORIDA COR-
PORATION, ET AL., PETITIONERS AND
APPELLANTS BELOW,

VS.

BALDWIN DRAINAGE DISTRICT, C. T. BOYD, AND
UNITED STATES OF AMERICA, RESPONDENTS
AND APPELLEES BELOW.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

REPLY BRIEF FOR PETITIONERS.

THOS. B. ADAMS,
1006 Bisbee Building,
Jacksonville, Florida,
Attorney for Petitioners.



SUBJECT INDEX

Point I	1
Point II	3
Point III	4
Point IV	4
Point V	5
Point VI	10
Point VII	12
Point VIII	24
Appendix A	27
Appendix B	30
Appendix C	36
Appendix D	38